



Guidance for Legal Matters Impacted by the Epidemic

【Basic Legal Responses for Epidemic】

Q1: Is Coronavirus Outbreak a Force Majeure?

Yes. Epidemic is an unforeseeable, unavoidable and insurmountable objective situation, which conforms to the definition of Force Majeure in Chinese law and international practice.

Q2: If this Coronavirus Outbreak is identified as Force Majeure in the case, when does the Force Majeure start?

It is recommended that the official announcement of the outbreak should prevail. Domestically, the National Health Commission announcement date is January 20, 2020; internationally, the WHO announcement date is January 31, 2020. For the application of this time, we recommend that it be determined in the individual case according to the actual situation.

Q3: Affected by the epidemic, is there any legal defense other than Force Majeure?

Yes, Change of Circumstances. Although the epidemic did not directly result in the inability to perform the contract, if the enterprise is significantly affected, it can negotiate with the counterparty of the transaction or request the people's court to determine whether to change or terminate the contract according to the principle of justice.

Q4 : How to prove that the influence by the epidemic? When to inform the counterparty?

If the parties claim that the epidemic is Force Majeure, they should promptly notify the counterparty and submit valid documents that can prove Force Majeure, such as documents issued by CCPIT and corresponding agencies. In order to help enterprises effectively deal with the adverse effects caused by the epidemic, CCPIT has reformed the certification platform since January 26, and enterprises can click to enter the following page: <http://www.rzccpit.com/>.

【Regarding Investment】

Q5 : Can the government expropriate enterprises according to Chinese laws? Is there any compensation?

Yes. According to the Emergency Response Law, Foreign Investment Law and other provisions, the state may expropriate enterprises, including foreign-funded enterprises, for the public interest needs, but shall follow legal procedures and pay reasonable compensation.

Q6: Is it possible to reduce the requirements because of the impact of the epidemic if there is an investment-gambling agreement or a performance goal?

Yes. If the performance goal cannot be objectively completed due to the epidemic, the contracting party may apply Force Majeure or change of circumstances taking into account the specific circumstance, and negotiate with the investors.

Q7: Is it a violation if the investor terminates the letter of intent for investment signed at the

beginning of the epidemic?

No. The letter of intent for investment is a preliminary consultation document, and the investor may terminate the letter of intent based on the actual situation. However, if the letter of intent for investment has a complete agreement on the terms of the investment, the investor shall be liable for breach of contract to terminate the letter.

【Regarding Trade】

Q8: Affected by the epidemic, can parties in a contract refuse to fulfill their contract obligations?

No. A party who is unable to perform a contract due to Force Majeure is exempted from liability in part or in whole in light of the impact of the event of Force Majeure, except otherwise provided by law. In practice, whether the epidemic constitutes Force Majeure should be discussed based on the actual circumstance case by case.

Q9: Affected by the epidemic, can the party of a contract ask for compensation or reduce the price?

Yes. If it is difficult to perform obligations under the contract affected by the epidemic, the contracting party may apply Force Majeure or change of circumstances taking into account the specific circumstance, and negotiate with the other party for compensation or reduction of the price.

Q10: If the contract has been breached before the epidemic, can the default party be exempted from liability for the epidemic?

No. If a party who is unable to perform a contract after the outbreak is exempted from liability in part or in whole in light of the impact of the event of Force Majeure. Where a party breaks the contract before the epidemic, it is not exempted from such liability.

【Regarding Employment】

Q11: Can employers reopen during the official extended holidays of the Spring Festival? Can employers keep suspended after the extended holidays?

Enterprises shall not reopen without approval. In accordance with relevant policies, except for those enterprises related to the protection of urban and rural operations, the prevention and control of epidemic, the needs of people's lives, and other enterprises that are urgently required to reopen in connection with important national economy and people's livelihood, for Hong Kong & Macao, and under special circumstances, other enterprises that will reopen without the approval of government departments will bear civil, administrative or even criminal liability. Enterprises can keep suspended after the extended holidays, however, payment to employees are required during the suspension according to laws and regulations.

Q12: Can employers arrange annual vacations during the extended holidays?

From February 3 to February 7, the government requires employers to stop work due to special reasons, and the employers cannot deduct employees' annual vacations because of the extension of holidays. As February 8th and 9th are rest days, annual vacations cannot be arranged either.

Q13: What if employees cannot return to work due to the Outbreak after 24:00 on February 9th?



Employers have the right to give priority to arranging paid annual leave for employees.

Q14: Can employees refuse to work for fear of infected with Coronavirus?

No. The labor relationship has the basic attribute of personal dependency. When providing labor to the employer, the employee shall abide by the employer's arrangement. Unless there are special circumstances or an exception in the labor contract, the employee shall obey the employer's work arrangement. After the expiration of the extended holidays prescribed by the government, if there are no special circumstances, employees should go working as normal, otherwise they should bear corresponding legal responsibilities.

Q15: Is infection with new coronavirus pneumonia a work-related injury?

Two situations will be identified as work-related injuries: "infected due to performance of work duties" and "infected due to work travel to Hubei Province"



投资、贸易、劳动关系之疫情应对

【疫情的基础法律应对】

Q1: 新冠疫情是不可抗力吗?

是。根据中国法律规定和国际惯例的定义,疫情属于不能预见、不能避免且不能克服的客观情况,是不可抗力。

Q2: 如本次疫情在案件中被认定为不可抗力,应从何时计算?

本次疫情在法律上认定的时间建议以官方宣布为准。就中国国内而言,以国家卫健委公告日即 2020 年 1 月 20 日为准;就国际而言,以 WHO 公告日即 2020 年 1 月 31 日为准。该时间的援引建议在个案中根据实际情况确定。

Q3: 受到疫情影响,除了不可抗力,还有什么合法理由?

有的,情势变更。虽然疫情没有直接导致不能履行合同,但企业受到重大影响,可以与交易相对方协调,或请求人民法院应根据公平原则确定是否变更或者解除合同。

Q4: 怎么证明受疫情影响,什么时候告知对方?

当事人主张疫情为不可抗力的,应提交能证明不可抗力的有效文件,比如中国贸促会以及相应机构出具的文件,并及时通知交易相对方。为帮助企业有效应对疫情造成的不利影响,中国贸促会已于 1 月 26 日起对认证平台进行改造,企业可登陆以下网页查询:
<http://www.rzccpit.com/>。

【关于投资】

Q5: 疫情下,政府是否可以征用企业?有补偿吗?

是。根据《突发事件应对法》、《外商投资法》等规定,为了公共利益的需要,国家可对包括外资企业实行征用,但应依法定程序并给予补偿。

Q6: 投资对赌协议或设定业绩目标的,是否可以受疫情影响为由降低要求?

是。因为新冠疫情导致的经营业绩在客观上无法完成的,可以根据具体情形适用不可抗力或情势变更,与对赌协议的投资方进行协商。

Q7: 疫情开始时签订的投资意向书,投资方解除意向书是否违约?

否。投资意向书属于前期磋商性文件,投资方可基于实际投资情况解除意向书。但投资意向书对投资条款已有完备约定的,双方合同投资方解除意向书需承担违约责任。

【关于贸易】

Q8: 受疫情影响,就可不履行合同吗?

否。因不可抗力不能履行合同的,根据不可抗力的影响,部分或者全部免除责任。在实践中,本次疫情对个案而言是否构成不可抗力,需结合个案情况进行讨论。

Q9: 受疫情影响，可以要求补偿或降低价款吗？

是。受疫情影响难以按照合同要求履行义务的，可以根据具体情形适用不可抗力或情势变更，与交易方协商要求补偿或降低价款。

Q10: 疫情前已经违约的合同，因为疫情可以免责吗？

否。当事人疫情前已经违约的，不能免除责任。只有疫情发生后不能履行合同的，根据不可抗力的影响，部分或者全部免除责任。

【关于劳动用工】

Q11: 延长复工期间，企业能否提前复工？企业能否在假期后视情况停工？

未经批准不得复工。根据有关政策规定，涉及保障城乡运行必需、疫情防控必需、群众生活必需和其他涉及重要国计民生、供港供澳及特殊情况急需复工相关企业除外，其他企业如未经政府部门批准提前复工，将承担民事责任、行政责任甚至刑事责任。企业可以根据生产经营状况在假期后继续停工，但应依法发放员工工资。

Q12: 企业是否可以安排年休假来抵销延长复工时间？

2月3日至2月7日是政府因为特殊原因而要求企业停工，不可安排年休假，2月8日9日为休息日，亦不能安排年休假。

Q13: 2月9日24时后因疫情问题仍不能复工的员工，如何处理？

企业有权优先考虑安排职工带薪年休假

Q14: 员工因害怕感染可以拒绝工作吗？

不可以。劳动关系具有人身依附性的基本属性，劳动者在向用人单位提供劳动之时应当遵守用人单位的安排，除有特殊情况出现或者劳动合同中有除外约定，否则劳动者应当服从用人单位的工作安排。在政府规定的延期上班时间期满后，如无特殊情况的，员工应正常上班，否则应承担相应的法律责任。

Q15: 员工感染新型冠状病毒肺炎是否属于工伤？

两种情况将被认定工伤：“因履行工作职责受感染”及“因工出差至湖北省受感染”。